

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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HARLAN ISKE,

Petitioner,

v.

STATE OF NEVADA,

Respondent.

Case No. 3:21-cv-00058-MMD-WGC

ORDER

Petitioner Harlan Iske, a Nevada inmate, has submitted a petition for writ of *habeas corpus* under 28 U.S.C. § 2254. (ECF No. 1-1 ("Petition").) Petitioner has not filed an application to proceed *in forma pauperis*, nor has he paid the filing fee. Accordingly, this matter has not properly commenced. See 28 U.S.C. § 1915(a)(2); LR LSR 1-1, 1-2.

Additionally, the Petition contains defects. First, Petitioner did not use the Court's required form for § 2254 petitions. See LSR 3-1. Although Petitioner attached two pages from this Court's form, the bulk of the Petition is on the form that state courts use for post-conviction *habeas corpus* petitions. Furthermore, the Petition is addressed to the Second Judicial District Court of the State of Nevada, and Petitioner has written the criminal case number of that court on the first page. By using the state-court form, Petitioner did not provide all the information that this Court needs to evaluate his petition.

Second, Petitioner did not name the correct respondent. Under Rule 2(a) of the Rules Governing Section 2254 Cases in the United States District Courts, the correct respondent is the warden of the prison where Petitioner is in custody.

The Court will thus dismiss this action without prejudice to the commencement of a new *habeas corpus* action, with the filing of a habeas petition under 28 U.S.C. § 2254 on the form required by this Court and naming the correct respondents. In that new action, Petitioner must pay the \$5.00 filing fee, or he must file an application to proceed *in forma*

1 *pauperis* on the proper form with both an inmate account statement for the past six
2 months and a properly executed financial certificate.

3 It is therefore ordered that this action is dismissed without prejudice to the filing of
4 a petition in a new action with either the \$5.00 filing fee or a properly completed
5 application form to proceed *in forma pauperis*.

6 It is further ordered that a certificate of appealability is denied, as jurists of reason
7 would not find the Court's dismissal of this improperly commenced action without
8 prejudice to be debatable or incorrect.

9 The Clerk of Court is directed to send Petitioner two copies each of an application
10 form to proceed *in forma pauperis* for incarcerated persons and a noncapital § 2254
11 habeas petition form, one copy of the instructions for each form, and a copy of the papers
12 that Petitioner submitted in this action.

13 The Clerk of Court is further directed to enter judgment accordingly and close this
14 case.

15 DATED THIS 27th Day of January 2021.

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18 MIRANDA M. DU
19 CHIEF UNITED STATES DISTRICT JUDGE
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